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September 26, 1983

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Mr. Thomas L. Sweeney, Chief  
Bureau of Solid Waste Management  
Office of Waste Management  
Hazen Drive  
Concord, New Hampshire 03301

Re: Performance Bonds for Sanitary Landfills

Dear Mr. Sweeney:

By memorandum of April 14, 1983, you asked whether the Bureau of Solid Waste Management (Bureau) is authorized to require a particular solid waste landfill operator to provide a performance bond or other financial assurance to guarantee the availability of funds to clean up the landfill. Our conclusion is that the Bureau may not impose such a requirement on landfill operators.

The State Solid Waste Management Act, RSA 149-M, does not expressly authorize the Bureau to require a landfill operator to provide either evidence or assurance of the operator's financial responsibility to cover the costs or remedial action. The Bureau, as an agency of the State created by the legislature, has only those powers and authority which are expressly granted or fairly implied by the statute. Appeal of Public Service Company of New Hampshire, 122 N.H. 1062, 1066 (1982). Consequently, unless the authority to require financial assurance from a landfill operator can be fairly implied from RSA 149-M, the Bureau may not impose such a requirement on solid waste facility permittees.

The Solid Waste Management Board (Board) is authorized to adopt rules relative to RSA 149-M, including standards for solid waste disposal facilities and permitting procedures. RSA 149-M:8, IV. The Board's authority to establish permit conditions may be fairly



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implied from this provision, provided that the conditions imposed merely fill in details to effectuate the purpose of the statute and do not add to, detract from, or in any way modify statutory law. "Administrative rules which go beyond the filling in of details are invalid." Opinion of the Justices, 121 N.H. 552, 557 (1981). A rule imposing a permit condition which requires a permittee to provide financial assurance of the costs associated with cleaning up a disposal site would not merely fill in the details of the authority granted to the Board under RSA 149-M:8. Such a rule would improperly expand the authority granted to the Board.

Nor would such a rule constitute a proper exercise of the Board's authority to adopt rules relative to facility standards under RSA 149-M:8, IV since it would not further the purpose of the Solid Waste Management Act. The purpose of the Act was stated by the legislature to be as follows: "to provide for the development of a proper, adequate and safe system which results in the disposal of solid wastes in facilities which are economical and environmentally safe." 1981 N.H. Laws Ch. 566, Section 2. Requiring an owner or operator of a facility to provide financial assurance of cleanup costs would not make the facility more economical or environmentally safe. Therefore, a rule imposing such a requirement would not be valid since it would not further either of these legislative purposes. Id. This conclusion is further supported by the fact that the legislature has expressly authorized the Bureau of Hazardous Waste Management to require financial assurances from hazardous waste facilities in RSA 147-A:5, and has not expressly authorized the Bureau of Solid Waste Management to do so.

For these reasons, it our conclusion that the Bureau may not require an operator of a solid waste landfill to provide evidence or assurance of financial responsibility to cover the costs of cleaning up a landfill.

Yours truly,

*Edward J. Campbell*

*for* Eve H. Oyer  
Assistant Attorney General  
Environmental Protection Division

EHO/clp

83-55-I